

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
Pat Wood, III and Nora Mead Brownell.

Southern Company Services, Inc.

Docket No. RT01-77-000

ORDER ON STATUS REPORT

(Issued July 12, 2001)

In this order, the Commission finds that the scope of the Regional Transmission Organization (RTO) that Southern Company Services, Inc. (Southern) states in its May 14, 2001 status report, as supplemented on June 20, 2001, it intends to pursue, does not satisfy the scope characteristic of Order No. 2000.¹

I. Background

On October 16, 2000, Southern, acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (the Southern Companies), filed a petition for declaratory order in response to Order No. 2000. On March 14, 2001, the Commission denied Southern's petition on the grounds that the RTO proposal (which Southern itself acknowledged was incomplete) failed to fulfill the characteristics and functions of an RTO, as articulated in Order No. 2000.² Specifically, the Commission found that, contrary to Order No. 2000, Southern's proposed RTO would include only new wholesale transmission services and would have the benefits of certain rate incentives flow to entities other than the RTO operators, inconsistent with Order No. 2000. In the March 14th order, the

¹Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), 65 Fed. Reg. 809 (January 6, 2000), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, 65 Fed. Reg. 12,088, 90 FERC ¶ 61,201 (2000), petitions for review pending sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.).

²Southern Company Services, Inc., 94 FERC ¶ 61,271(2001) (March 14th order). Notice of Denial of Rehearing, 95 FERC ¶ 61,172 and ¶ 61,190 (2001).

Commission stated that, as an alternative to revising its proposal, Southern should consider joining neighboring utilities in an RTO for the Southeast. The Commission directed Southern to file a status report with the Commission by May 14, 2001 that informed the Commission of the progress in forming an RTO for the Southeast.³

II. Southern's Status Report

On May 14, 2001, as supplemented on June 20, 2001, Southern filed its status report in compliance with the March 14th order. In the status report, Southern reported that it has entered into memoranda of understanding (MOUs) with several non-public utility transmission owners located within its operating companies' service territories regarding the formation of an RTO. These non-public utility transmission owners are Jacksonville Electric Authority, the City of Dalton, the Municipal Electric Authority of Georgia, the City of Tallahassee, the South Mississippi Electric Power Association, the Georgia Transmission Corporation, Alabama Electric Cooperative, Inc. (AEC), and the South Carolina Public Service Authority (Santee Cooper). Southern states that the MOUs involve all the transmission owners of the Southern Subregion of the Southeastern Electric Reliability Council (SERC), plus Santee Cooper, located in the VACAR Subregion of SERC. The MOUs, which are included in the status report and supplement, provide that the signatories will commit personnel and certain financial resources to develop an independent, third-party RTO that satisfies the requirements of Order No. 2000 and encourages participation by entities that are not public utilities. The MOUs provide that, to the extent practicable, the signatories will attempt to preserve the benefits and obligations of certain existing system integration agreements. The MOUs target December 15, 2001 for making the appropriate filings with the Commission that would accomplish these objectives.

Southern states that it and Tennessee Valley Authority (TVA) intend to discuss the creation of a Coordination Agreement between themselves and other transmission owners in the region. This Coordination Agreement would address the following matters:

a single, non-pancaked transmission rate for the region;

a coordinated OASIS for reserving transmission services in the southeastern region;

³94 FERC at 61,960.

parallel path flow resolution and coordinated congestion management methods;

a framework for coordinated transmission planning and expansion;

a common set of protocols for ATC determinations, TLR procedures, and security coordination;

a common generation interconnection process;

interregional transmission planning and other coordination efforts among adjoining transmission organizations covering different regions; and

a dispute resolution procedure.

Southern states that it discussed RTO participation with jurisdictional transmission owners across the Southeast, including participants in GridSouth⁴ and GridFlorida,⁵ and Entergy.⁶ Southern states that its participation in an RTO with these entities is less likely because they are all far along in developing their respective arrangements. Southern contends that changing configuration at this point and attempting to accommodate the desires of the varying parties, including those working with Southern, would raise many complicated issues, the resolution of which, in Southern's opinion, would delay the implementation date of the resulting RTOs. For example, Southern is concerned with various aspects of GridSouth's, GridFlorida's and Entergy's proposed governance structures. Southern states that it would prefer a Board that represents the RTO's investors, as opposed

⁴Carolina Power & Light Company, Duke Energy Corporation, and South Carolina Electric & Gas Company filed an RTO proposal (GridSouth Transco, LLC) in Docket No. RT01-74-000. Carolina Power & Light Co., et al., 94 FERC ¶ 61,273, order on rehearing, 95 FERC ¶ 61,282 (2001) (GridSouth).

⁵Florida Power & Light Co., Florida Power Corporation, and Tampa Electric Co. filed an RTO application (GridFlorida LLC) in Docket Nos. RT01-67-000 and RT01-67-001. GridFlorida LLC, et al., 94 FERC ¶ 61,363 (2001).

⁶Entergy Services, Inc. proposed a transco on behalf of the Entergy Operating Companies (Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc.) in Docket No. RT01-75-000 and RT01-75-001. The Entergy transco would operate under the proposed Southwest Power Pool, Inc. (SPP) RTO proposed in Docket No. RT01-34-000. Southwest Power Pool, Inc., et al., 94 FERC ¶ 61,359 (2001).

to stakeholders. Rather than delay the formation of RTOs, Southern suggests that the more viable approach would be for separate RTOs to develop where possible, and, at a later date, allow them to consolidate, if that is the appropriate business decision.

Southern states that it is diligently pursuing development of an RTO with those non-public utility transmission owners with which it has MOUs, and states that it intends to make a filing with the Commission by December 15, 2001. Southern further states that it will continue to work with other transmission owners and RTOs in the Southeast to develop agreements to address regional transmission issues.

The Industrial Consumer Intervenors,⁷ SMI Steel, Inc., a division of Commercial Metals Company, and AEC filed comments on Southern's report. Each of these parties expressed concern with the limited scope of Southern's proposed future RTO formation activities and requests that the Commission refocus Southern's RTO formation discussions to creating a larger RTO in the Southeast.

III. Discussion

The Commission finds that the progress that has been made regarding RTO formation with the non-public utility transmission owners is commendable. The MOUs between Southern and these entities demonstrate a willingness on the part of these transmission owners to participate in the goals and objectives of Order No. 2000, notwithstanding their non-public utility status. This is an encouraging development. In addition, the MOUs properly focus on the development of a Southeast RTO, consistent with our stated goal.

Other aspects of Southern's status report are not satisfactory. As we previously noted, in the Commission's March 14th Order, we stated that Southern should consider becoming part of a larger RTO covering the Southeast. Similarly, in an order on the GridSouth RTO proposal, the Commission stated "while not ideal with respect to scope and configuration, [GridSouth] represents a good first step toward the creation of an RTO in the Southeast region and can serve as a platform for the formation of a larger RTO in the Southeast."⁸ More recently, we have stated that our goal is the formation of a single RTO

⁷Electricity Consumers Resource Council, the American Iron and Steel Institute, the American Forest and Paper Association, and the American Chemistry Council.

⁸GridSouth, 94 FERC ¶ at 61,993.

in the Southeast.⁹ However, based on Southern's status report, the Commission is concerned that Southern intends to pursue formation of an RTO that does not include any other region of the southeast other than its operating companies' service territories and those of the non-public utility transmission owners with whom it has MOUs. Indeed, Southern proposes that either it or its RTO will engage only in what can be called "seams" discussions with other RTOs forming in the Southeast, such as GridSouth, GridFlorida and SPP, and other transmission owners in the Southeast such as the TVA (through the use of so-called "Coordination Agreements").

We find that this approach is inadequate, and we do not agree with Southern's purported rationales for this approach. For example, Southern opines that the more viable approach for the Southeast would be to permit individual, contiguous RTOs to develop where possible, and allow them to consolidate later, if that is the appropriate business decision. The Commission's concern with this approach is two-fold. First, Southern suggests that business interests should drive the creation of a Southeast RTO. While we are mindful of Southern's claims that it must take into account its business interests, an RTO of sufficient scope lies within everyone's business interest. Southern's proposal does not meet the scope characteristic.

Second, individual, contiguous RTOs are likely to develop different business models, governance structures, market models, and transmission facility policies. The Commission is concerned that when the time arises for these RTOs to combine, considerable time and effort will be required by both the RTO parties and the Commission to modify the different rules to create one larger RTO. The Commission cannot agree with Southern's assertion that progress in the contiguous RTOs is so far advanced as to make Southern's involvement with them problematic.¹⁰ RTOs cannot exclude qualified transmission owners, and the Commission will take all steps necessary to ensure that any proposed RTO bordering Southern does not inhibit the addition of new transmission owners. Further, there is no functional RTO at this time in the Southeast. Therefore, the sooner Southern joins with other utilities in developing a Southeastern RTO, the sooner the relevant stakeholders will have a voice in the process by which the RTO's business rules will be established. Southern can protect its interests through contractual agreement.

We reiterate: the Commission's goal is to have a single RTO in the Southeast, and to have that single RTO operational as soon as possible. RTO applicants have informed the

⁹GridSouth, 95 FERC ¶ 61,282, slip op. at 7 (May 30, 2001).

¹⁰GridSouth, in its May 14, 2001 filing in Docket No. RT01-74-002, states that it would prefer Southern's direct participation in GridSouth as opposed to other options (Transmittal Letter at 5).

Commission that initial start-up costs for RTOs and the energy markets that they will run may be significant.¹¹ It would be highly inefficient to establish two or more functioning RTOs in the Southeast, and then consider consolidating them. If faced with multiple, contiguous RTOs in the Southeast, the Commission might be required to consider whether the excess costs associated with multiple RTOs (when compared to the costs for a single Southeast RTO) are appropriately recovered through the RTOs' rates for jurisdictional services.

In order to successfully encompass the natural market for bulk power in the Southeast, it is necessary that the Southeast transmission owners combine to form a single RTO. The Commission has been attempting to facilitate the development of large, regional transmission organizations reflecting natural markets since we issued Order No. 2000. We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. Through their independence from market participants, RTOs can ensure truly non-discriminatory transmission service and will instill confidence in the market that will support the billion dollars of capital investment in generation and demand side projects necessary to support a robust, reliable and competitive electricity marketplace. RTOs are the platform upon which our expectations of the substantial generation cost savings to American customers are based.

While there will be "start up" costs in forming a larger RTO, over the longer term, large RTOs will foster market development, will provide increased reliability, and will result in lower wholesale electricity prices. However, these savings will be delayed, perhaps significantly, if RTOs are permitted to develop incompatible structures and systems, or if we were to approve RTOs that do not encompass wholesale market trading patterns. Accordingly, we today direct the parties in the Northeast and Southeast to mediation, under an expedited schedule.

To facilitate this, we are issuing, concurrent with this order, a separate order that directs the parties in this proceeding and the parties in the proceedings in Docket Nos. RT01-74-000 (GridSouth), RT01-34-000 (Southwest Power Pool, Inc.), and RT01-75-000 (Entergy), to participate in settlement discussions for 45 days before a mediator and an appropriate consultant to assist and provide advice during the mediation.¹² The order directing mediation requires the mediator to file a report within 10 days after the 45 day period, which includes an outline of the proposal to create a single Southeastern RTO,

¹¹Southern noted in its Petition that current independent system operators have reportedly expended \$40 million to \$300 million in start-up costs. Petition for Declaratory Order, Docket No. RT01-77-000 at 85.

¹²Regional Transmission Organizations, Docket No. RT01-100-000.

milestones for completion of intermediate steps and a deadline for submitting the joint proposal. We intend to review the report and may issue a subsequent order.

We encourage the state commissions, TVA and the Southeastern Power Administration to participate in these efforts. We believe their participation will further the resolution of this matter. Likewise, we encourage (but do not require) parties in the proceeding in Docket No. RT01-67-000 (GridFlorida LLC) to participate in the mediation.

The Commission orders:

Southern's report, as supplemented, is accepted for filing.

By the Commission. Commissioner Breathitt dissented in part with a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

UNITED STATES OF AMERICA
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Southern Company Services, Inc.

Docket No. RT01-77-000

(Issued July 12, 2001)

Breathitt, Commissioner, dissenting, in part:

Since the Commission began promoting RTOs as a means to remove barriers and impediments to wholesale electricity markets, I have been fully committed to the goal of implementing RTOs. However, I am dissenting, in part, to express my objections to specific language in this order and other RTO orders on today's agenda supporting the creation of four RTOs in the country. I agree with the majority's claim that the Commission has been attempting to facilitate the development of large RTOs reflecting natural markets since we issued Order No. 2000. That was our stated goal and one that I have actively pursued. However, today's orders go further by stating that the Commission "favors the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast, and one RTO for the West." I do not necessarily favor such development.

When the Commission deliberated over how to attain our mutual objective of RTO formation, we decided to adopt an open collaborative process that relied on voluntary regional participation. The intent was to design RTOs so that they could be tailored to the specific needs of each region. We specifically declined to propose fixed or specific regional boundaries under section 202(a) of the FPA. Instead, we concluded, as a matter of policy, that we would not attempt to draw boundaries, based upon our conviction that transmission owners, market participants, and regulators in a particular region have a better understanding of the dynamics of the transmission system in that region, and that they should propose the appropriate scope and regional configuration of an RTO. We did not specifically endorse one particular scheme of RTO configuration, but opted instead to establish appropriate guidelines to aid in RTO development. In fact, our regulation requires only that an appropriate region is one of sufficient scope and configuration to permit an RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Today's order represents a dramatic departure from the approach we pursued in Order No. 2000 to the extent that it directs the formation of four specific RTOs. Just as some commenters to our RTO rulemaking feared, the Magic Markers have come out, and the boundaries are being drawn with little regard to the status and timing of RTO formation efforts in various regions of the country. This was not my intent at the time we issued Order No. 2000; and the events since we issued Order No. 2000 do not compel me to embrace this policy shift. Parties have spent many hours and countless resources in negotiations, collaborations, and complicated business strategy sessions to develop

reasonable RTO approaches. The impact of the majority's directive that these four RTOs be formed could be to render these efforts useless and force parties to begin the difficult and time-consuming process anew. For example, the Midwest ISO -Alliance settlement, which the Commission approved and which represented a tremendous effort by many parties, could unravel.

If the majority believes that the Commission should depart from the basic philosophies embodied in Order No. 2000, then I believe it would be only appropriate to initiate a formal notice-and-comment rulemaking proceeding so that we could make a reasoned decision informed by the views of the stakeholders in this process – state commissions, chief among others.

Finally, I do not adopt the majority's assertion that forming larger RTOs will result in lower wholesale electricity prices. This is a laudable goal, and as such, I embrace it. As a general proposition, Order No. 2000 encouraged the development of large RTOs. However, the promise of lower wholesale electricity prices is one that I, as a federal official, am not willing to make to consumers at this time.

For these reasons, I respectfully dissent.

Linda K. Breathitt
Commissioner